IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 10485 of 1992(W)

PETITIONER:

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1. N.K.GOPINATHAN (EXPIRED),
(EX-HAVILDAR, SERVICE NO.7089779P)
OTRP (OPERATOR TYRE REPAIRING PLANT)
GOPIVILASAM,
EAST PERUNADU P.O., RANNI PERUNNAD,
PATHANAMTHITTA DISTRICT.

ADDL.PETITIONERS 2 to 5 IMPLEADED AS PER ORDER ON C.M.P. NO.26505/1995, DATED 09/10/2000

2. E.D.ANANDAVALLY,
W/O.M.K.GOPINATHAN,
GOPI VILASAM, EAST PERUNAD P.O.,
RANNI, PATHANAMTHITTA DISTRICT

3. G.SAJEEM KUMAR,
S/O.M.K.GOPINATHAN,
--DO-- --DO--

4. G.MANOJ KUMAR,
S/O.M.K.GOPINATHAN,
--DO-- --DO--

5. G.BEENA,
D/O.M.K.GOPINATHAN,
--DO-- --DO--

BY ADV. SRI.P.SANTHALINGAM

RESPONDENTS:

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1. OFFICER IN CHARGE,
EME RECORDS, SECONDERABAD-1,
ANDHRA PRADESH.

2. DIRECTORATE GENERAL OF EME,
(EME PERS) MASTER GENERAL OF THE
ORDINANCE BRANCH, ARMY HEAD QUARTERS,
BHQ P.O., NEW DELHI-110 011.

3. CHIEF OF ARMY STAFF,
ARMY HEAD QUARTERS, NEW DELHI.

4. D.P.D.O.(DISTRICT PENSION DISTRIBUTING OFFICER),
KOLLAM.

5. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF DEFENCE,
NEW DELHI.

BY ADV. SRI.V.V.SURESH, ADDL.CGSC
SMT.MOLLY JACOB, CGC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 10485 of 1992(W)

PETITIONERS' EXTS:-

EXT.P1:- A TRUE COPY OF THE RELEVANT EXTRACT OF THE DISCHARGE CERTIFICATE INDICATING THE REASONS FOR DISCHARGE FROM THE INH SANJEEVANI, COCHIN ON 23/09/1986 TO THE PETITIONER.

EXT.P2:- A TRUE COPY OF THE ORDER NO.7089779/05/PEN DATED 03/11/1986 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P3:- A TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 16TH JANUARY, 1987 BEFORE THE COMPETENT AUTHORITY BY THE PETITIONER.

EXT.P4:- A TRUE COPY OF THE COMMUNICATION DATED 08/06/1987 ISSUED TO THE PETITIONER BY THE COMPETENT AUTHORITIES.

EXT.P5:- A TRUE COPY OF THE REPRESENTATION DATED 27/12/1987 SUBMITTED BEFORE THE PRESIDENT OF INDIA BY THE PETITIONER.

EXT.P6:- A TRUE COPY OF THE ORDER NO.7089779/DP5.PEN DATED 05/07/1988 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P7:- A TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE FIRST RESPONDENT FORWARDED THROUGH THE DSSA BOARD, PATHANAMTHITTA BY THE PETITIONER ON APRIL, 1989.

RESPONDENTS' EXTS.:-

EXT.R1(a) PHOTO COPY OF THE EXTRACT OF THE OPINION OF THE COURT.

EXT.R1(b) PHOTO COPY OF THE LETTER NO.7089779/DP-5/PENSION DTD.06/06/1989

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J

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O.P. No. 10485 of 1992(W)

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Dated this the 23rd day of May, 2007

J U D G M E N T

The original petitioner (through heirs) was boarded out from the Indian Army on 23/09/1986.

2. Going by the pleadings of the petitioner, the counter affidavit and the exhibits produced along with those pleadings as also the reply affidavit, the following facts emerge:-

a) The petitioner suffered certain injuries as a result of a scuffle between him and another havildar, both apparently in a drunken state, that led to a court of inquiry which concluded its decision as per Exhibit R1(a).

b) The injuries suffered by the petitioner in that altercation was one which led to an assessment of a disability of 40%. He was also assessed a 50% disability on account of immature cataract in his eyes.

c) The competent authority concluded that the petitioner is not entitled to disability pension.

That decision was affirmed by the Government of India in an appeal vide Government of India, Ministry of Defence, decision was communicated to the petitioner as per letter dated 08/06/1987.

d) The petitioner was granted service pension and was also given the benefit of revision of service pension on the basis of pay revisions on the basis of Pay Commission reports.

e) By Exhibit P6, his revised rate of pension was fixed at Rs.603/-. However, it appears that Exhibit P6 proceeds to describe that as disability pension and also reflection a degree of disability of 90%.

f) The petitioner made Exhibit P7 representation complaining that though he has received the amount shown in Exhibit P6, the element of disability pension has not been released to him.

g) Exhibit P7 was replied as per Exhibit R1 (b), which clearly shows that the petitioner was

notified that what was granted to him at the rate of Rs.603/- per month is the revised rate of service pension and that the mentioning of the degree of disability in Exhibit P6 was erroneous and not intended. He was also reminded that his disability pension was already rejected by the competent authority and that the said decision was confirmed by the Government on 08/06/1987, as already noticed above.

h) Though Exhibit R1(b) is dated 06/06/1989, this original petition is filed on 14/08/1992 seeking a declaration that the petitioner is entitled to disability pension.

i) Though for want of counter affidavit within a reasonable time, this Court had allowed the original petition deciding it on merits and by imposing an order of cost, on 09/10/2000 that judgment was reviewed and recalled by order dated 05/12/2006 in R.P.No.53/2001.

3. Noticing the facts stated above, it can be seen that though the petitioner stood notified by letter dated 08/06/1987 that his request for disability pension has been ultimately rejected by the Ministry of Defence, he did not challenge that decision. Inspite of Exhibit R1(b) communication clarifying the error in Exhibit P6 and reminding the petitioner of the aforesaid decision of the Government dated 08/06/1987, he did not challenge even Exhibit R1(b), within a reasonable time. Under such circumstances, it is obvious that the petitioner is relying on Exhibit P5 only to apparently cull out a case that Exhibit P6 contains an erroneous decision regarding disability pension, emerging out of Exhibit P5 representation of the petitioner made to His Excellency The President of India.

4. Now, coming to the question of disability, the only grey area is the 40% disability owing to the injuries suffered by the petitioner in a scuffle while in military service. That injury had, along with his 50% disability on account of cataract in his eyes, come to the attention of two competent authorities. Even if the guidelines were such that the benefit of any error should fall in

favour of the soldier, no irrationality or perversity is pointed out, as regards the decision making process or the decision rejecting the claim for disability pension. At any rate, the request on that ground stood rejected by the Government in June 1987, while this original petition is filed only in August 1992.

5. In the aforesaid circumstances, there are no grounds to allow the original petition by granting the reliefs sought for to disability pension. Such claims are rejected. However, if the amounts covered by Exhibit P6, treating the same as service pension is not yet disbursed, the same shall be disbursed appropriately, taking note of the fact that the petitioner is survived by the legal representatives, as of now.

The original petition is disposed of as above.

THOTTATHIL B.RADHAKRISHNAN
Judge

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